

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CHRISTOPHER M. DEVINE,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 04-12186-NG
)	
STOP AND SHOP COMPANIES,)	
)	
Defendant.)	
)	

EX PARTE AFFIDAVIT OF DANIEL B. KLEIN

I, Daniel B. Klein, being duly sworn, do hereby depose and say as follows:

1. I am of legal age and believe in the obligation of an oath. I make the following Affidavit based on personal knowledge unless otherwise indicated.
2. I am legal counsel for the Defendant, Stop and Shop Supermarket Company, LLC ("Defendant" or "Stop and Shop"), in the above-captioned action.
3. Stop and Shop and Plaintiff Christopher M. Devine ("Plaintiff" or "Devine") were scheduled to appear before Magistrate Judge Alexander on December 1, 2006 for a mediation in the above-captioned action.
4. Devine did not appear at the scheduled mediation on December 1, 2006.
5. On November 30, 2006, I received two threatening and disturbing voicemail messages from Devine on my direct office telephone line. I personally listened to these messages and had an assistant transcribe them. I reviewed and revised the transcriptions for full accuracy. The actual voicemail messages have been saved on my firm's voicemail system.

6. The first message from Devine was received at 3:04 P.M. on November 30, 2006.

The message originated from telephone number 508-236-8999.

7. The following is a true and accurate transcription of the 3:04 P.M. voicemail message:

Yes Dan Klein it's Chris Devine. Just letting you know that there will be no mediation tomorrow. Just to let you know if you want to go ahead and file your dispositive motion go right ahead, but I'm not going to be there tomorrow. And I was thinking about going to the press with this. I'm related to Jackie Coogan, Uncle Fester from the Adam's family. If my family ever finds out about this, you're in deep shit. This ain't a threat just to let you know. I am really upset you're at fault, you should be at fault and you know you're at fault, so admit fault. So, just to let you know I will get a hold of you some other time. I hope you get this friggen message. I'm not too happy with you.

8. The second message from Devine was received at 8:39 P.M. on November 30, 2006. The message originated from telephone number 508-761-8500.

9. The following is a true and accurate transcription of the 8:39 P.M. voicemail message:

Yes Dan Klein it's Chris Devine giving you a call back. Just letting you know that if you want mediation I'd appreciate it if you would redo the memorandum. It is very important that you redo that memorandum because I am not happy with it and there is going to be no mediation unless you're at fault. You're at fault in this case. So I suggest you go back to these people, go back Fatima, go back to Diana, go back to Rob Slarve, go back to whoever you need to go back to and what you are going to need to do is you are going to need to know the truth. Write it on paper and that can be your memorandum and then you can come up with a cost of what you are going to give me. That is what I want. That is what I am going to get. If you don't like it then it's going to trial. I will call channel 7 news, channel 5 news and I will get the papers involved. I'm related to Jackie Coogan. Do you know who that is? He's Uncle Fester from the Adams Family. I come from a very important, important family. Right now I am at Arbour Fuller hospital in Attleboro, South Attleboro. So if you want to call here and talk to me that's fine too. I am not happy with you. So I suggest that you do what you have to do and I will do what I

have to do. I am getting my money whether you like it or not. Have a nice day. So file your dispositive motions, do what you have to do. I'm not happy. Bye.

10. The 8:39 P.M. voicemail references three key witnesses in the case, Fatima Cabral, Diana Paris, and Robert Slarve.
11. According to Devine's own deposition testimony in this action, he has a history of mental illness.
12. Pursuant to Devine's signed medical release authorization, I obtained a certified copy of Plaintiff's medical records from Community Care Service Counseling Center on June 2, 2006, a true and accurate copy of which is attached hereto as Exhibit A.
13. According to these records, Plaintiff has been diagnosed with a Psychotic Disorder.
14. Plaintiff has repeatedly submitted incoherent and inappropriate documents to this Court. True and accurate copies of two such documents are attached hereto as Exhibit C.
15. According to Devine's own deposition testimony, he also has a history of engaging in violent and threatening altercations when he is upset. See Excerpts of Devine Deposition Transcript, true and accurate copies of which are attached hereto as Exhibit B ("Devine Depo."), at pp. 30 to 53.
16. Devine testified that he had a history of mental illness.
17. Devine further testified that he has been involuntarily hospitalized a number of times as a result of his mental health condition. See Devine Depo. at pp. 48-50.
18. During his deposition, Devine described at least two occasions when he was arrested for disorderly conduct toward the police.

19. One arrest occurred when he appeared at the Massachusetts Commission Against Discrimination (the "MCAD") to complaint about delays in the investigation of his case. During that incident, Devine became so disorderly and threatening that the MCAD was forced to call the State Police. During the altercation, Devine "got in the face" of two State Police officers who had to throw Devine to the ground and handcuff him to restrain him. Devine Depo. at pp. 37-40.
20. According to Devine, he was arrested for disorderly conduct and was subsequently committed by the Judge to a mental facility.
21. Another arrest occurred when Devine was approached by a police officer who was attempting to help him when Devine's car broke down in an intersection. During that incident, Devine became upset and uncontrollable toward the police officer. During the altercation, the police officer could not get Devine to calm down. The police officer arrested Devine for disorderly conduct. Devine Depo. at pp. 51 to 53.
22. For obvious reasons, the voicemail messages and in light of Devine's history of mental illness and erratic, violent, and threatening behavior have placed my client and me in fear for my personal safety and for the safety of the three witnesses Devine named in his voicemail message.

Respectfully submitted,
STOP AND SHOP COMPANIES
By its Attorney(s),

/s/ Daniel B. Klein

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